IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.319 OF 2006

Satish Raghunath Hatekar Petitioner

versus

Sau Sushama Satish Hatekar Respondent

Shri Nitin Muley for petitioner.

Shri C.T.Chandratre for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th February 2006

PC :

1. Heard Shri Muley for the petitioner and Shri Chandratre for respondent.

2. The grievance of the petitioner-husband who challenges the order of interim alimony in Hindu Marriage Petition No.169 of 2002 is that when the wife is not claiming any interim alimony but only her expenditure for contesting the proceedings, then the Court below has erred in granting interim alimony as also litigation costs. An application for modification of the order passed on 30th June 2004 to the above effect has also

been rejected erroneously by the Court below by observing that the respondent-wife claims interim alimony also in her application which is preferred on 27th January 2003.

3. With the assistance of learned counsel appearing for parties I have perused the application made on 27th January 2003, reply thereto and the order dated 30th June 2004 as well as 26th August 2005.

4. Shri Muley's submission is that children from the wedlock are in the custody of the petitioner and he is taking care of them so also providing for their maintenance and education. In these circumstances and more particularly when the respondent-wife is employed, the Court below erred in granting interim alimony and litigation expenses. Further, the averments in the application of the wife does not claim any interim alimony.

5. This contention is opposed by Shri Chandratre on the ground that the application must be read as a whole and not in isolation. So read, the claim is for both, interim alimony as well as litigation expenses.

6. In my view, it is not just that the salary of the husband and wife must be considered but also other circumstances. If the petitioner-husband is right in his submission that the children are with him and he is looking after them, then the claim of alimony of the respondent-wife pending matrimonial proceedings should be considered in that light as well. If she is employed and has some income, then equities have to be balanced taking into consideration the materials placed by both sides.

7. In these circumstances, proper course would be to set aside the order on the Review Application dated 26th August 2005 and restore the review application on the file of Trial Court for decision afresh on merits and in accordance with law. That cannot be done unless the petitioner complies with the direction at least in part keeping his right for modification and/or review of the order intact. In the interest of justice it is directed that the petitioner-husband should pay a sum of Rs.800/- per month from 27th January 2003 till end of February 2006. Shri Muley states on instructions that the said amount shall be paid within a

period of six weeks from today. So also till the review application is heard, he will pay a sum of Rs.800/- per month as interim alimony subject, of course, to his rights and contentions in the review proceedings.

8. Shri Chandratre states that the respondent - wife would accept this amount without prejudice to her rights and contentions and more particularly those which are raised in the present proceedings.

9. The above order and direction would meet the ends of justice. Application (Exhibit-30) is restored to the file of Trial Court. The Trial Court to endeavour to dispose of the petition as expeditiously as possible. This order is passed without prejudice to the rights of petitioner-husband. Petition disposed of.

(S.C.DHARMADHIKARI, J.)